THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.1190 OF 2000

DATED: 01-05-2007

Between:

T. Raj

.. Petitioner

and

The Dy. Chief Security Commissioner, Railway Protection Force, South Central Railway, Secunderabad and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.1190 OF 2000

ORDER:

This writ petition is filed seeking a mandamus declaring the action of the 1st respondent in passing the dismissal order, vide Force Order No.16/96 (X/P.227/Rule 153/95-06), dated 16.02.1996, which was confirmed by the proceedings of the 2nd respondent, vide Force Order No.136/96 (X/P.227/153/95-06), dated 17.07.1996, and further confirmed by the proceedings of the 3rd respondent, vide Order No.99-Sec (E)/DAR-3/27 CC, dated 13.08.1999, as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India; and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

It appears, the petitioner was appointed as a Safaiwala into the service of the Railway Protection Force with effect from 26.01.1984. While so, after completion of 11 years of service, the petitioner was issued with a charge sheet, dated 01.12.1995, by the Assistant Security Commissioner, enumerating the following charges:-

> Charge No.1: Sri T.Raj, while working from 20.05.1993 as Safaiwala at RPF Dog Squad at CKL/SC has submitted his declaration for Railway Free Pass indicating one Dilip as his son, which is not true, and thus violated Rule 3 (i) (iii) of Rly. Service Conduct Rules, 1966.
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> Charge No.2: Sri T.Raj, while working as Safaiwala at RPF Dog Squad, Dog Kennel at Chilkalguda,

Secunderabad from 20.05.1993, engaged in business of running private Kennel and violated Rule 15 of Railway Service Conduct Rules, 1966.

Thereafter, a detailed enquiry was conducted and ultimately the petitioner was dismissed from service by an order, dated 16.02.1996, of the 1st respondent. Aggrieved by the same, the petitioner carried the matter in appeal before the 2nd respondent and the 2nd respondent, by his order dated 17.07.1996, confirmed the orders passed by the 1st respondent. Aggrieved thereby, the petitioner further carried the matter in revision before the 3rd respondent, but the 3rd respondent also confirmed the orders passed by the 2nd respondent, by his proceedings dated 13.08.1999. Aggrieved thereby, the present writ petition is filed.

It is the case of the petitioner that he has accepted the first charge. However, he denied the second charge and it is his case that he never ran any private kennel and he did not violate any rules of the Service Conduct Rules.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned proceedings and other material available on record.

After considering the explanation of the petitioner and the material available on record, the disciplinary authority came to the conclusion that insofar as the first charge is concerned, there is ample evidence on record to show that the petitioner has submitted a declaration for issuance of privilege pass, marked in the enquiry as Ex.P3, mentioning the name of one Dilip as his son. Though the petitioner has innocently declared in the enquiry that he has second

wife and Dilip was born to his second wife, it was came into light that there was no second marriage and the inclusion of the name of Dilip as son was erroneous and therefore the charge is proved. Insofar as the second charge is concerned, on the basis of Ex.P14, visiting card and Ex.P11, a press clipping in which one Lalitha George had addressed a letter to Deccan Chronicle, Hyderabad Edition, dated 06/09/1995, advising the readers not to avail the services of 'Pal Kennel' owned by Raja Reddy, as it indulges in shady and notorious activity of buying, selling and stealing dogs. The dog lovers were advised not to utilize the services of the said Kennel. The statement of the said Lalitha George was corroborated by Ex.P17- certificate and by the statement of G. Mathew, Honorary Secretary of Hyderabad Canine Club. According to the Enquiry Officer, Raja Reddy is none other than T.Raj, the petitioner herein. Therefore, the second charge was also proved.

The sum and substance of the second charge is that the petitioner has been running a private kennel and doing some business. It is not the case of the respondents that any loss was caused to the department due to running of such kennel by the petitioner. May be the petitioner is not entitled to run any such business, but the fact remains that he is only a Safaiwala and his statement for the first charge that he had been married for the second time and Dilip was his son through the second wife, which was found to be not correct, shows his innocence and, hence, it must be deemed that the petitioner did such business innocently. Further, it is not the case of the respondents that the petitioner had committed any such misconduct or some other misconduct of similar nature during the 11 years of service rendered by him.

Under these circumstances, I am of the opinion that the

punishment of dismissal from service is shockingly disproportionate to that of the misconduct alleged and proved against the petitioner.

In this regard, the learned counsel for the petitioner has drawn the attention of this Court to Rule 156 of the Railway Protection Force Rules, 1987 which reads as under:

Imposing of punishment of dismissal, etc:

Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or removal from service to any member of the Force in the following cases, namely:-

(a) Dismissal:-

(i) Conviction by a criminal Court;

(ii) serious misconduct or indulging in committing or attempting or abetting an offence against railway property;

(iii) discreditable conduct affecting the image and reputation of the Force;

(iv) neglect of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways;

(v) insolvency or habitual indebtedness; and

(vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment.

(b) Removal from service:

(i) any of the misconduct for which he may be dismissed under clause (a) above;

(ii) repeated minor misconducts;

(iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause.

The learned counsel for the petitioner further submitted that none of the charges framed against the petitioner would fit into the above cited definition of the misconduct enumerated for the purpose of imposing punishment of dismissal as well as removal from service.

In view of the above and also in the overall circumstances of the case, generally speaking, the matter requires to be remitted back to the disciplinary authority for imposing an appropriate punishment, which is less than the punishment of dismissal or removal from service. But, since the matter is of the year 1996 and more than 11 years have passed away, it is desirable to give a quietus to the litigation at this stage itself.

Accordingly, the impugned orders are hereby set aside and the management is directed to reinstate the petitioner with continuity of service, but without any backwages and attendant benefits.

The writ petition is accordingly allowed to the extent indicated above. No costs.

C.V. RAMULU, J

1st May, 2007.
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